United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/973
17 November 2000

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 973

Case No. 987: KHALIL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Ms. Marsha A. Echols;

Whereas, on 26 May 1999, Mohammed Haj Khalil, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfill all the formal requirements of article 7 of the rules of the Tribunal;

Whereas, on 3 July 1999, the Applicant, after making the necessary corrections, again filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 903, rendered by the Tribunal on 20 November 1998;

Whereas the application contained pleas which read, in part, as follows:

> "My plea and request to UNAT is to accept my claim that my real Date of Birth (DOB) is 11 November 1937 (and not 1936) as my claim is supported by authentic and genuine official (Government and U.N.) documents, where the Respondent (UNRWA) does not have one single document, original or photocopy, to prove otherwise. Hence, I ask UNAT to

revise its Judgement No. 903 (...). The main reason behind the Respondent's rejection of the Joint Appeals Board's (JAB) recommendation, which was in my favour, was that the appeal was not receivable (...). But the JAB received my application and so did UNAT. The Respondent could not produce any genuine document to prove its claim and could not prove that the information in the Personnel files, regarding my DOB, was certified.

I feel that UNAT's analysis of the issue in its presentation of the facts and decision to receive the case (...) as explained in the introduction and stating the facts, do not concur nor go in harmony with the final decision and judgement.

..."

Whereas the Respondent filed his answer on 19 December 1999;

Whereas the facts in the case were set forth in Judgement No. 903.

Whereas the Applicant's principal contentions are:

1. Additional supporting documents submitted to the Tribunal by the Applicant justify reconsideration of the case and revision of the original decision rejecting the Applicant's claim.

2. The evidence used by the Commissioner-General for his refusal to change the Applicant's birth date in the Agency's records was neither reliable nor authentic.

Whereas the Respondent's principal contentions are:

1. The application does not fulfil the preliminary requirements of an application for revision under article 11 of the Statute of the Tribunal.

2. The Applicant has not made any submission which could lead the Tribunal to conclude that a previously unknown new or decisive fact exists warranting a rehearing of the Applicant's case.

The Tribunal, having deliberated from 24 October to 17 November 2000, now pronounces the following judgement:

I. This is an application for the review of Judgement No. 903 rendered on 20 November 1998. After carefully examining the facts, the Tribunal determined in that case that the Applicant's date of birth was 11 November 1936 and not 1937 as contended by the Applicant.

II. Article 10.2 of the Tribunal's Statute provides that: "Subject to the provisions of article 11, the judgements of the Tribunal shall be final and without appeal".

Judgements rendered by the Tribunal can only be reopened by theTribunal in specific instances.

III. Article 11 of the Tribunal's Statute provides that:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or error arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

This article sets forth the conditions for the exercise of the Tribunal's power of revision. The provisions of this article are limiting in respect of review but do not impliedly deprive the Tribunal of certain inherent powers it has in any case, unless the written law governing the Tribunal's jurisdiction expressly takes away those powers. The inherent powers of the Tribunal relate to instances such as when an interpretation of a judgement (see Judgement No. 949, *Afawubo* (2000), paragraph II) or rectification in a judgement of a clerical error is requested or when there has been fraud or corruption in connection with the judgement. The first part of article 11 defines the Tribunal's powers of revision beyond these limited instances. In the case of this Tribunal, clearly those general jurisdictional

principles relating to revision have been limited by the first part of article 11. It is this part of article 11 that must be applied because this is not a case where interpretation of a judgement or rectification of a clerical error is requested or fraud or corruption in connection with the judgement is alleged.

IV. Thus, in this case the power of revision can only be exercised if the requirements of the first part of article 11 are satisfied. Moreover, the Tribunal in Judgement No. 303, *Panis* (1983), paragraph I, said of article 11:

> "That article enables the Secretary-General or the Applicant to 'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...' ... The standards contained in article 12 [now article 11] are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

(See also Judgements No. 460, *Shatby* (1989); No. 894, *Mansour* (1998); No. 949, *Afawubo* (2000) and No. 950, *Abbas* (2000)). Consequently, no party may seek revision of a judgement merely because that party is dissatisfied with the decision of the Tribunal and wants to have a second round of litigation. (See Judgement No. 894, *Mansour*). Any claim for revision based on unacceptable reasoning, misinterpretation of the evidence, or alleged failure specifically to address a plea or to take into account facts produced in evidence, other than a claim based on the circumstances specified in article 11, would not be accepted by the Tribunal.

V. In this case, the Applicant does not identify any decisive fact which was discovered after Judgement No. 903 and which was unknown both to the Tribunal and "also to the party claiming revision". All the facts which are presented to the Tribunal were known to the Applicant at the time he filed his action in Judgement No. 903. The Jordanian passport issued in 1985, which contains the date claimed by the Applicant to be his true date of birth and which is different from the date determined by the Tribunal in Judgement No. 903, was in the possession of the Applicant at the time of his original application. Clearly he was aware of the date of birth in that passport at

that time. Under these circumstances, the Applicant has not presented a justification for an award for revision under article 11, even though the fact on which he bases his claim for revision might not have been presented to the Tribunal in the earlier case. The Tribunal's decision to choose the earlier date of birth rather than the later date was in fact based on the examination of evidence relating to both.

VI. The Tribunal, therefore, decides that there is no new fact presented in this case that is new and was unknown to the Applicant at the time he filed his application in Judgement No. 903.

VII. For the above reasons, the Tribunal rejects the Applicant's pleas in their entirety.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Marsha ECHOLS
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/974
17 November 2000

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 974

Case No. 1060: ROBBINS

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Ms. Marsha A. Echols;

Whereas, on 18 January 1999, Marjorie Ann Robbins, a former staff member of the United Nations, filed an application containing pleas which read as follows:

"PLEAS

First, the Respondent's rejection of the unanimous recommendation of the Geneva Joint Appeals Board (hereinafter 'JAB') to pay the Applicant the amount of US$ 55,000 as compensation for damages (...) on the grounds that 'the Board relied on too many assumptions' is unsubstantiated and vague. The Respondent has not indicated which of the Board's assumptions he finds to be 'too many', neither has he explained on what assumptions he relied in reaching his decision to award a lower amount of compensation.

Second, the amount of compensation awarded by the Respondent, namely seven months' net base salary at the rate in effect at the time of the Applicant's separation from service, is totally arbitrary in so far as it bears no obvious relationship to the injury suffered.

Third, the assumptions on which [the] JAB relied in making its unanimous recommendation are sound and the calculation of the compensation (albeit somewhat conservative) is based on an actual financial loss incurred by the Applicant.

Fourth, the Applicant therefore respectfully requests the Tribunal to order the Respondent to pay to her the full compensation unanimously recommended by [the] JAB, namely the sum of US$ 55,000 (fifty-five thousand United States dollars)."

Whereas the Respondent filed his answer on 20 June 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 22 May 1977, with a probationary appointment as Associate Translator at the P-2 level in the Department of Conference Services. On 1 February 1979, she was granted a permanent appointment and a promotion to the P-3 level. On 1 April 1982, she was promoted to the P-4 level. On 15 December 1991, she was transferred to the Centre for Human Rights, Geneva, as Administrative Officer. On 2 June 1992, she was reassigned to the position of Editor to the Official Records Editing Section (ORES), Language Services, Conference Service Division (CSD), United Nations Office at Geneva (UNOG).

On 31 March 1993, the Chief, Language Services, UNOG, recommended the Applicant for the forthcoming P-5 level vacancy of Chief, ORES. On 16 July 1993, however, the Associate Administrative Officer, Executive Office for Office of Conference Services (OCS), advised the Senior Recruitment and Placement Officer, Professional Staffing Service, that OCS could not support the Applicant's candidature as she had not passed the editor's examination and had less experience than other candidates. On 12 August 1993, Language Services re-submitted its recommendation of the Applicant.

On 15 November 1993, the new Placement and Promotion System (ST/AI/390) was implemented. This notwithstanding, in December 1993, it was decided that, in accordance with the transitional placement and promotion measures contained in ST/IC/1993/66, the post of Chief, ORES, would not be advertised but that potential candidates would be resubmitted to UNOG for consideration by the relevant departmental panel, a recommendation from the Head of Department and a review by the Appointment and Promotion bodies. On 31 December 1993, the Chief, ORES, retired and the post became vacant. On 1 January 1994, the Applicant assumed the functions of

Chief, ORES, as Officer-in-Charge, and effective 1 April 1994, the Applicant was granted a special post allowance at the P-5 level.

On 17 February 1994, the Director of Personnel, OHRM, sent a memorandum to the Director of Administration, UNOG, confirming that the post of Chief, ORES, was to be considered under the transitional measures contained in ST/IC/1993/66. On 16 March 1994, the Director of Personnel informed all Heads of Departments and Offices that OHRM and the Appointment and Promotion bodies would not be able to consider any transitional cases received after 31 March 1994.

On 18 July 1994, OHRM made a further request for an evaluation of the seventeen eligible candidates for the post of Chief, ORES, and on 27 October 1994, the UNOG personnel service replied, reiterating its recommendation of the Applicant. On 31 October 1994, the Director, Translation and Editorial Division, OCS, UNOG indicated that he had no objection to the recommendation made by the Chief, Languages Service, UNOG, in favour of the Applicant's candidacy.

On 22 December 1994, the Director, CSD, confirmed to the Chairperson, Appointment and Promotion Board (APB), that the post was to be treated as a transitional case. On 27 April 1995, the Secretary, APB, advised the Director-General, UNOG, that the Applicant's promotion had not been recommended by the APB nor approved by the Secretary-General and that, since the post became vacant after ST/AI/390 (which required notification and circulation of vacancies to the staff at large) came into effect, the APB could not consider the case under the transitional arrangements in ST/IC/1993/66. The Board recommended that the position be advertised and, on 26 May 1995, the vacancy announcement was issued and circulated. On 7 June 1995 the Applicant submitted a formal application and was recommended by OCS.

On 11 October 1995, a memorandum dated 8 August 1995 from the Secretary, APB, was forwarded to the Applicant advising her that, on 27 April 1995, the Secretary-General had approved the APB recommendation to re-circulate the position of Chief, ORES. The Secretary, APB, also expressed her regret that the Applicant had not been informed of the decision at the time and explained that,

> "[u]nder the guidelines set out in ST/IC/1993/66, 'the secretariat of the Appointment and Promotion bodies will inform the selected staff member and the applicants who have submitted additional 'pre-review' information of the outcome of the process' ... [but that] ... [n]o guidelines exist[ed], however, for informing candidates who were recommended by their departments but were not selected by the Secretary-General".

On 6 November 1995, the Applicant wrote to the Secretary-General requesting review of his decision to re-circulate the position, receipt of which was acknowledged by the Chief, Administrative Law Unit, on 30 November 1995.

On 22 December 1995, the Director, CSD, recommended the Applicant for the post. Nonetheless, on 3 January 1996, the Applicant withdrew her application and on 13 February 1996, filed an appeal with the Joint Appeals Board (JAB) against the administrative decision to re-circulate the post.

On 3 May 1996, the Director, Division of Administration, UNOG, informed the Applicant that the Secretary-General had decided to terminate her employment under the 1996 Early Separation Programme and that he had agreed to the Applicant's request that she receive her termination indemnity in the form of special leave with full pay from 1 August 1996 until 13 March 1997, and on special leave without pay (for Pension Fund purposes) from 14 March 1997 until 22 May 1997. On 8 May 1996, the Applicant signed her acceptance of the terms and conditions of her separation. However, the following day she was advised that an additional condition had been placed on her early separation and that she would also be required to withdraw her JAB appeal. On 26 June 1996, she informed the Director, Division of Administration, that she would not comply with this additional condition. On 18 July 1996, the Chief, Strategic Planning for Human Resources Management, UNOG, advised her that her separation would proceed in accordance with the original agreement and that she was no longer required to withdraw her appeal.

On 13 February 1996, the Applicant lodged an appeal with the Geneva JAB. The JAB submitted its report on 16 October 1998. Its conclusions and recommendation read as follows:

"Conclusions

66. The Panel concluded that the Appellant's candidature for promotion to the post of Chief, ORES, had been denied full and fair consideration. On one hand, procedural errors, administrative confusion and delays doomed the Appellant's case to failure when it was submitted to [the] APB. On the other hand, the Appellant was deprived of her rights to bring additional information to the attention of [the] APB or to submit a recourse, thus violating the due process. It was undisputable thus that the Secretary-General's decision to recirculate the post of Chief, ORES, was based on flawed procedures. This should engage the responsibility of the Administration and entail compensation for the injury suffered by the Appellant.

67. In considering the Appellant's claim for retroactive promotion, the Panel recalled the Administrative Tribunal jurisprudence and agreed that it could not say with any certainty what [the] APB would have decided had the case been properly presented to it. Nor did the Panel wish to even substitute for [the] APB. Therefore, the Panel concluded that it was not in a position to recommend a retroactive promotion. Nor could it recommend that the Appellant's case be resubmitted to [the] APB.

68. However, here was a staff member who, over a period of 22 years, had consistently received the highest ratings, who had been recommended several times for the post at issue, who had carried out the functions of this post for more than two years. Her subsequent possible advancement was frustrated by the Administration through errors and delays in the handling of her case. Her case for promotion in 1994/1995 was not even considered on its merits by [the] APB, despite several recommendations, and she was deprived of her rights for recourse before [the] APB. No better candidate was even selected for the post, which remained vacant.

69. In view of the above consideration, the Panel interpreted the Appellant's decision to withdraw her candidature and to agree for early separation as a reaction or weariness of a staff member, faced with administrative mishandling of her case and who felt she was unfairly treated.

70. The members of the Panel also agreed to declare that, in their view and had the Appellant's case been properly presented to [the] APB in 1994, its was highly probable that she would have been promoted to the post of Chief, ORES.

71. In considering what remedial action to recommend, the Panel took note of the Appellant's concern for moral satisfaction. The Panel concluded that, not being able to recommend retroactive promotion, it had to establish some form of compensation which, in keeping with the gravity of the injury suffered by the Appellant, might provide her with a certain moral satisfaction.

72. The Panel thus decided to take as a parameter of reference what the Appellant's pension would have amounted to had she been promoted on 1 April 1994 – at which date she was granted a SPA [special post allowance].

73. The Panel also took into account a basic hypothesis followed by the United Nations Joint Staff Pension Fund, namely that life expectancy of women is 86 (eighty-six) years.

Recommendation

74. In view of the considerations and conclusions mentioned above, the Panel unanimously recommends the payment to the Appellant of the amount of $ 55,000 (fifty five thousands), for the damages suffered."

On 21 December 1998, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Secretary-General has ... taken note of the Board's finding that your candidature for promotion to the post of Chief/ORES had been denied full and fair consideration because of procedural errors, administrative confusion and delays, and because you had been deprived of your right to bring additional information to the attention of the APB or to submit a recourse. The Secretary-General has also taken note of the Board's conclusion that the decision to recirculate the post to which you had applied was based on flawed procedures. The Secretary-General is in agreement with those findings and further agrees with the Board that you should be compensated for those procedural errors and subsequent delays in connection with the consideration of your application for the post in question.

The Secretary-General has taken note that the Board has recommended that you be awarded compensation in the amount of US$ 55,000 and he understands that this amount represents the difference in pension between the P-4 and the P-5 levels payable over 31 years. He considers that, in recommending this amount, the Board relied on too many assumptions, to wit, that you would have been promoted to the P-5 level post of Chief/ORES; that you would have remained in service for at least three years following your promotion in order to receive pension at the P-5 level; and that you would be receiving such pension until the age of 86 years. The Secretary-General therefore cannot accept this

amount and he has decided that compensation be awarded in the amount of seven months net base salary at the rate in effect at the time of your separation from service.

..."

On 18 January 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The compensation awarded by the Respondent is totally arbitrary and bears no relationship to the injury suffered by the Applicant.

2. The calculation of the compensation due the Applicant by the JAB is based on actual financial loss and should be sustained.

3. The Respondent's rejection of the JAB's unanimous recommendation is arbitrary.

Whereas the Respondent's principal contention is:

The award to the Applicant of seven months net base salary at the rate in effect at the time of her separation from service constitutes adequate compensation for the harm the Applicant has suffered.

The Tribunal, having deliberated from 25 October to 17 November 2000, now pronounces the following judgement:

I. The Applicant claims payment of the full amount recommended by the JAB ($55,000.00), representing the difference in pension between P-4 and P-5 levels if paid over 31 years, i.e. until she reached the age of 86. She was awarded seven months net salary by the Respondent, which she claims is about $20,000.00 less than the amount recommended by the JAB, after the Respondent conceded that the promotion procedures applied in the Applicant's case were flawed and that she should be compensated for procedural errors and subsequent delays in connection with the consideration of her application for promotion.

II. The amount recommended was arrived at by the JAB on the assumption that the Applicant would have been promoted. The Tribunal is of the view that this was an erroneous assumption on which to base the calculation of compensation. The Tribunal has consistently held that a staff member has no right to promotion in the absence of a specific legal obligation creating such a corresponding right, but that is not the case here. On the other hand, the Tribunal has also held that the discretion to promote a staff member, which the Respondent enjoys, must not be abused. As the Tribunal stated in Judgement No. 905, *El-Far* (1998):

> "... The administrative authority has a discretion in regard to promotion (cf. Judgements No. 275, *Vassiliou*, No. 375, *Elle* (1986) and No. 390, *Walter* (1987). However, this discretion is not an absolute one and must be exercised without abuse so that the staff member is accorded fair treatment. ..."

Irregularities in procedure (see Judgement No. 293, *Nayyar* (1982)), including undue delay in taking a decision relating to a promotion (see Judgement No. 310, *Estabial* (1983)), may result in an abuse of discretion.

III. The Applicant had no right to promotion. Consequently, the issue here is not whether the Applicant should be compensated as if she had been promoted. Instead the issue is whether seven months salary is adequate compensation for the Respondent's unfair treatment of her - resulting from irregularities in procedure and undue delay in taking the promotion decision - which constituted an abuse of discretion.

IV. In this connection, the Tribunal notes the following statement of the Respondent on the record:

> "Regretfully again, a pronouncement was made by OHRM on 17 February 1994 to the effect that this case fell under the transitional measures outlined in ST/IC/1993/66 – pronouncement which is somewhat puzzling as in order to qualify, staff members had to have been placed against and fully assumed the higher level functions before 15 November 1993. In this case, the post was only vacated effective 1 January 1994 and the case thus already came under the provisions of ST/AI/390 which took effect on 15 November 1994.

> [...] When the case eventually was submitted to APB as a transitional case, the APB effectively disagreed with the pronouncement made by the then Director of Personnel and rejected the case on procedural grounds as it has done in other similar cases.
>
> To sum, delays caused by the initial difference of opinion between the substantive offices in UNOG, and at Headquarters on the candidature of [the Applicant] for the post of Chief, ORES, Geneva, compounded by procedural delays thereafter, have necessarily delayed preparation of this case for review by the APB in the proper context."

V. It also noted that in her memorandum dated 16 March 1994, the Director of Personnel, OHRM, had informed all Heads of Departments and Offices that "OHRM and the Appointment and Promotion bodies will not be able to consider any transitional cases received after 31 March 1994" and these "cases [should be presented to the APB] without delay". If the case was to be considered as a transitional case, as stressed by the Director of Personnel in her memorandum dated 17 February 1994, and as reiterated in a memorandum of 22 December 1994 by the Director of Conferences Services Division to the Chairperson of the APB, then clearly UNOG failed to meet the deadline for submission of the Applicant's case to the APB.

VI. Further, in her memorandum dated 8 August 1995, the Secretary of the APB informed the Applicant that, under ST/IC/1993/66, "the secretariat of the Appointment and Promotion bodies will inform the selected staff member and the applicants who have submitted additional 'pre-review' information of the outcome of the selection process. No guidelines, however, exist for informing candidates who were recommended by their departments but were not selected by the Secretary-General."

This explanation cannot be regarded as satisfactory. The lack of guidelines was a serious irregularity.

VII. The Respondent also offered the following explanation demonstrating that the Applicant's case should have been considered under the transitional measures:

> "It should be stressed that the transitional procedure was a *simplified* procedure and to be applied only in very exceptional circumstances.

> ST/IC/1993/66 (para.14) and other relevant issuances did not provide an avenue for recourse to the APB in the event that APB rejected a case. The recourse procedure as known prior to ST/AI/390 was last in force in connection with the 1992 placement and promotion exercise governed by ST/AI/373.
>
> A pre-review letter, as conceived under ST/AI/390 was not applicable to the transitional measures, mainly as such letters are addressed to the applicants *not* recommended for a given vacancy."

VIII. The Respondent states elsewhere that the Applicant's case had been wrongfully taken up under the transitional measures, and then refers to paragraph 14 of ST/IC/1993/66 to deny recourse to the Applicant, which would seem to imply rather that the Respondent continued handling the case as a transitional case. This kind of inconsistency and contradiction did not accord fair treatment to the Applicant.

IX. The Tribunal also notes that the promotion process was begun in early December 1993, when the Applicant submitted her application for the post and that the Applicant had still not been informed of an outcome when she withdrew her candidature on 3 January 1996. The lapse of over two years without a published result in the promotion process constitutes undue delay and unfair treatment.

X. The lack of transparency on the part of the Administration, the confusion caused by the absence of clear guidelines and the lack of clarity in the decisions by the Administration, the fact that for about two years a firm decision on promotion had not been taken and communicated to the Applicant before she accepted an agreed separation offer and the eventual failure to fill the post for which the Applicant had applied, all indicate clearly that she was treated in a very arbitrary and unfair manner.

XI. The seriousness of the wrong and moral injury done the Applicant warrants more than the compensation paid her by the Respondent. The Tribunal finds that compensation of ten months

salary in total would be appropriate in the circumstances. Hence, the Respondent must pay the Applicant an additional three months salary.

XII. For the foregoing reasons, the Tribunal:

(i) Orders the Respondent to pay the Applicant an additional three months net base salary at the rate in effect at the date of her separation from service in addition to what has been paid to her already;

(ii) Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Marsha A. ECHOLS
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary

United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/975
17 November 2000

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 975

Case No. 1076: RIVOLA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Victor Yenyi Olungu;

Whereas on 21 novembre 1996, the Tribunal rendered Judgement No. 792 in favour of the Applicant, Ms. Gisèle Rivola;

Whereas, in paragraph VII of this judgement, the Tribunal concluded as follows:

"(1) The Tribunal orders that the Applicant's case be remanded to the Classification Committee and that her post grading should be reconsidered. (Cf. Judgements No. 597, *Colayco* (1993) and No. 602, *Calder* (1993)). In accordance with article 9, paragraph 2 of the Tribunal's Statute, the Tribunal orders the Respondent to pay to the Applicant three months of her net base salary at the rate in effect at the time of her separation from service.

(2) In addition, because of the callous manner in which the Respondent handled the Applicant's case, the Tribunal orders the Respondent to pay the Applicant as compensation the amount of three months' net base salary at the rate in effect at the time of her separation from service."

In compliance with the Tribunal's judgement, the International Trade Centre (ITC) remanded the case to its Classification Appeals Committee which examined it on 6 February 1998. On 2 March 1998, the Chief, Personnel Section, Division of Administration, recommended to the Executive Director that the grade of the post previously occupied by the Applicant be maintained at the G-4 level. The recommendation was endorsed by the Executive Director on 3 March 1998 and communicated to the Applicant on 25 March 1998.

On 21 April 1998, the Applicant addressed a letter to the Secretay-General objecting to the finding of the Classification Appeals Committee. By a letter dated 25 September 1998, the Chief, Personnel Section, ITC, replied to the objections of the Applicant addressed to the Secretary-General, transmitting to her a copy of the rating sheet and of the Report of the Classification Appeals Committee.

On 7 April 1998, the Applicant filed an application with the Tribunal in which she requested the implementation of Judgement No. 792. The application contained pleas which read as follows:

"A. Cancellation of the recommendation made by the Classification Appeals Committee and endorsed by the Executive Director of ITC by communication of 25 March 1998 (...).

B. Cancellation of the memorandum dated 22 March 1991 of the Chief of Personnel (...) establishing the grade of my post at the G-4 level.

C. Implementation of the administrative decision of the Chief of Personnel of 8 December 1989 (...) informing me of 'the results of the job classification' and annexing the new job description of the G-5 post (...).

D. Retroactive implementation of that classification to 1 January 1989, in accordance with the memorandum of the Executive Director dated 20 March 1990 (...).

E. Payment of compensation in the amount of US$ 138,000 to cover material injury and loss of salary and pension rights. Payment of an additional amount of US$ 150,000 for the moral injury suffered."

Whereas the Respondent filed his answer on 4 November 1999;

Whereas the Applicant filed written observations on 28 December 1999;

Whereas the Applicant's principal contentions are:

1. The Respondent failed to comply with and properly implement the decision of the Administrative Tribunal rendered in Judgement No. 792.

2. The procedures employed by the Respondent in the classification exercise ignored the identical basic elements of fairness found lacking by the Tribunal in Judgement No. 792, were also arbitrary and prejudicial and continued to violate the Applicant's due process rights.

Whereas the Respondent's principal contentions are:

1. The Respondent properly implemented Judgement No. 792 by remanding the case to the Classification Committee and in instructing it to scrupulously follow proper procedures in the reconsideration of the grading of the Applicant's post.

2. The procedure and process followed by the Committee were fair and protected the Applicant's due process rights

The Tribunal, having deliberated from 26 October to 17 November 2000, now pronounces the following judgement:

1. This is not the first time that the Applicant has filed an application with the Tribunal. Even though a recommendation had been made in 1989 to reclassify her post to the G-5 level, it was decided in 1991 to maintain the post at the G-4 level. The Applicant lodged an appeal with the JAB to cancel the decision taken in 1991 and thus to reclassify the post to the G-5 level. The JAB declined to overturn the decision because of the lack of evidence that the Applicant had been discriminated against, but recommended to the Secretary-General that she be granted compensation because of the summary nature of the classification exercise. The Secretary-General complied with the recommendation of the JAB and granted the Applicant two months salary. The Applicant was not satisfied with this decision, however, and filed an appeal with the Tribunal, which, in its Judgement No. 792, of 21 November 1996, remanded the case to the Classification Committee for reconsideration of the Applicant's post grading. The Applicant was awarded further compensation of

three months salary in addition to the two months salary that had been granted in accordance with article 9, paragraph 2, of the Tribunal's Statute.

In compliance with the Tribunal's decision, the Classification Committee reviewed the classification of the Applicant's post and maintained it at the G-4 level, whereupon the Applicant filed another application with the Tribunal to cancel the decision taken in 1991 (to maintain her post at the G-4 level) and to pay her the additional salary corresponding to the G-5 level for the period from January 1989 to January 1993 (the date on which she was individually promoted to the G-5 level) and corresponding to the G-6 level (to which she believes she should normally have been promoted) for the period from February 1993 to the end of January 1996, the date on which she retired. In addition, she sought an increase in her pension for the period since 1996 and substantial compensation for the moral injury suffered.

The Applicant's pleas are directed towards the cancellation or setting aside of the decision taken by the Classification Committee, which convened a special meeting as requested by the Tribunal in its Judgement.

II. The Applicant contests the decision of the Classification Committee on other grounds. She alleges that the Committee took too long to meet after the Tribunal had rendered its Judgement. It did not have before it the relevant documents (but mistakenly considered an outdated job description instead of a more recent document, though not signed by the Applicant). In particular, the Committee did not hear the principal parties concerned and thus the Applicant herself and her hierarchical superiors.

The Respondent argues only that the Judgement of the Tribunal had been properly implemented once a committee had convened a meeting and that the procedure followed has been in conformity with the rules in force. The Respondent nevertheless draws attention to a very detailed document prepared by ITC entitled, "Written observations on the [Applicant's] appeal to the United Nations Administrative Tribunal". In that document, the Applicant's criticisms are given serious consideration and most of them are refuted on the grounds that the retroactive classification of a post in 1998 following two previous exercises in 1991 and 1993 gives rise to innumerable disputes. The Tribunal must be careful not to substitute itself for a classification committee and redo that

committee's work. The Tribunal is not competent, for example, to rule, as the Applicant requests, on the choice of classification methods. The following points, however, should be noted:

Firstly, the Applicant provided no evidence of the discrimination which she is alleged to have suffered. (This had already been noted by the Tribunal in its Judgement No. 792.)

Secondly, the Classification Committee has clearly made an effort to finalize and improve the classification exercise, mainly by employing the services of a consultant who was not involved in the earlier classification exercises.

The Tribunal therefore considers that its Judgement No. 792 of 21 November 1996 has been properly implemented.

III. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Vice-President

Victor YENYI OLUNGU
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary